UNITED STATES
v.
DELBERT G. OXFORD
DOROTHY M. OXFORD

IBLA 70-216 Decided January 10, 1972

Appeal from decision in Colorado Contest 422 by Robert D. Mesch, Departmental Hearing Examiner, holding mining claim invalid.

Affirmed.

Mining Claims: Determination of Validity -- Mining Claims: Discovery: Generally

To constitute a discovery upon a placer mining claim there must be physically exposed within the limits of the claim minerals of such quality and quantity as to warrant a prudent man in expending his labor and means, with a reasonable prospect of success, in developing a valuable mine.

Mining Claims: Discovery: Generally

Evidence of mineralization sufficient only to warrant further exploration is insufficient to establish discovery of a valuable mineral deposit under the mining laws.

Mining Claims: Contests -- Mining Claims: Determination of Validity -- Rules of Practice: Government Contests

A mining claim is properly declared invalid where the Government establishes a prima facie case of lack of discovery, and the contestee presents no direct or rebuttal evidence.

APPEARANCES: Delbert G. Oxford, pro se.

OPINION BY MR. STUEBING

Delbert G. Oxford and Dorothy M. Oxford have appealed to the Secretary of the Interior from a decision by the Chief of Mineral Appeals, Office of Appeals and Hearings, Bureau of Land Management, dated June 22, 1970, affirming a hearing examiner's decision of September 12, 1969, which declared the Lucky Break placer mining claim in Sec. 11, T. 9 S., R. 78 W., 6th P.M., Park County (within the Pike National Forest), Colorado, to be invalid.

The record shows that the Oxfords purchased the Lucky Break placer claim from Mrs. Elsie Olson in 1950. The claim is alleged to be valuable for gold. The validity of the claim was challenged by a contest complaint issued by the Colorado land office, June 19, 1967, upon the request of the Forest Service, U.S. Department of Agriculture, on charges that:

> A. No valuable mineral deposits have been discovered within the limits of the claim.
>
> B. The lands within the limits of the claim are nonmineral in character.

A hearing was held on these charges June 5, 1969, at Fairplay, Colorado, at which appellant, Delbert Oxford appeared pro se.

From the evidence developed at the hearing, the examiner concluded that the contested mining claim is not at this time supported by a valid discovery of a valuable mineral deposit as required by the mining laws. Citing the long accepted standard of discovery set forth in Castle v. Womble, 19 L.D. 455 (1894), and excerpts from more recent discussions in Chrisman v. Miller, 197 U.S. 313 (1905); United States v. Coleman, 390 U.S. 599 (1968); and Converse v. Udall, 399 F.2d 616 (9th Cir. 1968), cert. denied, 393 U.S. 1025 (1969), the examiner stated that the validity of a mining claim cannot be recognized unless there has been a discovery of a valuable mineral deposit within the limits of the mining claims; that a valuable mineral deposit is an occurrence of mineralization of such quality and quantity as to warrant a person of ordinary prudence in the expenditure of time and money for the development of a mine and the extraction of the mineral; and that the mineral deposit must have a present value for mining purposes. Emphasizing the distinctions between the terms "exploration" and "discovery," the latter of which would justify a prudent man in going ahead with his development work with a reasonable prospect of success in developing a paying mine, he ruled that the claim in question is only in the exploration stage and that no discovery has been made so as to justify development work. See Converse v. Udall, supra.

The examiner then stated that:

> The test for determining whether a valuable mineral deposit has been found sufficient to satisfy the requirements of the mining laws is not whether the particular mining claimant feels justified in the further expenditure of labor and means, but whether a person of ordinary prudence would, under the circumstances, by justified in undertaking the development of a mine. The test is completely objective. It cannot be satisfied by considering the state of mind of the particular mining claimant or circumstances that are peculiar to a particular mining claimant. For example, public lands cannot be acquired under the mining laws simply because the mining claimant is willing, for one reason or another, to undertake the development of a mine and (1) receive no remuneration for his time and labor, or (2) receive a rate of return on his investment which would be less than could be obtained by investments in Government bonds. The test is whether a person of ordinary prudence would invest his labor and means in the particular property after a full consideration of the available alternatives, including the labor and investment markets. (Emphasis added.)

The Office of Appeals and Hearings concurred with the hearing examiner's determination that no discovery had been shown. In affirming the examiner's ruling, however, it expressly took exception to a limited portion of the examiner's discussion and modified the decision by eliminating that language underscored in the above quotation. The decision specifically pointed out that this modification in no way affects the soundness and correctness of the remainder of the examiner's decision. In addition, it stressed that in a contest proceeding the Government bears the burden of producing sufficient evidence to establish a prima facie case, and thereafter the burden shifts to the contestees to prove the validity of the claim by a preponderance of the evidence. Foster v. Seaton, 271 F.2d 836 (D.C. Cir. 1959). It then concluded that the prima facie case presented by the Government, in the absence of rebuttal evidence by the contestees, required that the claim be held invalid.

Appellant has appealed to the Secretary restating essentially the same arguments made below. He asserts that the rulings of the Bureau of Land Management were not fair and impartial, stating that the decisions stressed all aspects favorable to the Government while minimizing those factors which benefited the contestees' case. He argues that he had dug a series of 5 to 6 additional test holes in which samples showed gold values by visible evidence of greater quantities than the best samples taken by the Bureau's mineral examiner; that he didn't have these samples assayed because placer gold is easily identified by experienced persons and since its fineness or purity is constant in a given area the need for evaluation by an assayer is wholly unnecessary and his fee a needless expense; that the quality of the samples from these holes could easily be determined by using the "yardstick" or "rule of thumb" because the placer deposits showed 6 to 15 colors or particles of gold per pan of placer material which can be processed profitably. Appellant points to an adjacent claim, the "Alma placer claim," one half mile east of his claim, which he alleges produced a large amount of gold in the 1930's. He states that almost all the land surrounding his claim and in the entire general area has been patented as placer claims where sufficient gold was discovered. He asserts that the Government's case by itself has established the fact that sufficient gold is present and has been found on his claim to justify further development and to establish, without question, the validity of the claim.

First, there are no grounds for appellant's charge that he has not received a fair and impartial hearing in his case. A review of the record establishes that appellant was adequately provided due process and that all proceedings were conducted in accordance with established procedures. Where such a charge is asserted, the law requires a substantial showing of bias either to disqualify a hearing officer or to justify a ruling that a hearing was unfair. Converse v. Udall, supra; United States v. Elsie Cody, 1 IBLA 92 (1970). Appellant has not met this burden. He has merely made general assertions without providing any factual basis to support his claim.

Next, the fact that appellant now relies on his own self-serving evaluation of untested and unsubstantiated samples taken from additional test holes is of no consequence in proving the validity of his claim. The record shows that on three separate occasions a Forest Service mineral examiner, Mr. Warren C. Roberts, obtained samples from the Lucky Break Placer Claim in areas specifically designated by Mr. Oxford as places where he claimed to have obtained his best gold values. Further testing of these samples established limited gold values from

these test sites. 1/ This information, without rebuttal, set the foundation for the ultimate conclusion that the Lucky Break Placer Claim could not be mined economically.

Appellant was afforded the opportunity to designate any specific area for mineral examination as his point of discovery. The government's mineral examiner would have examined samples from any workings or additional areas designated by the appellant. It is well settled that a government mineral examiner need only examine the discovery points made available for inspection. They have no duty to rehabilitate discovery points or to explore beyond the current workings of the mining claimant. United States v. Herbert H. Mullin, Pearl F. Mullin, C. A. Gussman, 2 IBLA 133 (1971); United States v. Wayne Winters, 78 I.D. 193 (1971); United States v. Bryan Gould, A-30990 (May 7, 1969), and cases cited therein. If the mineral examiner did not examine the discovery points which appellant thought he should have examined, it was incumbent on appellant, in addition to establishing such fact, to show by competent evidence that minerals of significant values were exposed at these points. United States v. Frank W. Whitenack, 1 IBLA 156 (1970).

Appellant's references to his own observations as to the value of his test samples taken from additional test sites and to the use of the "yardstick or rule of thumb" is not competent evidence sufficient to establish significant mineral values. Nor does his reference to gold discovered in the nearby vicinity back in the 1930's provide an adequate basis to infer a discovery of gold on his particular claim. To validate a mining claim, the claimant must actually expose a valuable mineral deposit physically within the claim. Henault Mining Company v. Tysk, 419 F.2d 766 (9th Cir. 1969), cert. denied 398 U.S. 950 (1970). As correctly pointed out in the decision below, the discovery of a valuable mineral deposit in a placer mining claim can be established only by showing that minerals have been found within the limits of the claim of such quality and quantity as to warrant a man of ordinary prudence in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine. Castle v. Womble, supra.

1/ Assays of the test samples showed gold values of 1 cent, 2 1/2 cents, 1 cent, 26 cents, and 22 cents per cubic yard, respectively. The government mineral examiner testified that the values would have to be approximately 50 cents per cubic yard before the material could be mined economically. (Tr. 72.)

The record shows that the recognized standards of discovery were applied in this case. Mere evidence of mineralization that might warrant further exploration or engender hope of future profit does not demonstrate a discovery. Although appellant contends that what he has found on his claim would justify further work to establish the validity of his claim, such evidence of mineralization coupled with the hope or belief that minerals of greater value may subsequently be discovered and mined economically does not validate the claim. See Converse v. Udall, supra; United States v. Henault Mining Company, 73 I.D. 184 (1966), Aff'd in Henault Mining Company v. Tysk, supra; United States v. Elsie Cody, supra.

In conclusion we concur with the decisions the Bureau of Land Management. It is clear from the state of the record that the Government established a prima facie case in support of its complaint. As noted herein the contestee has presented no evidence in support of his allegations in this appeal and has failed to overturn the Government's case. Accordingly, we find that no discovery has been shown on the claim and that the claim was properly declared invalid.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of Interior (211 DM 13.5; 35 F.R. 12081), the decision appealed from is affirmed.

Edward W. Stuebing, Member

We concur:

Douglas E. Henriques, Alternate Member

Newton Frishberg, Chairman